IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3799 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHBHAI @ MOGLI BHANABHAI RATHOD THRO WIFE REKHABEN H
Versus
COMMISSIONER OF POLICE

Appearance:
MR NM KAPADIA for Petitioner
MR SJ DAVAE, AGP for Respondent Nos.1,2 AND 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 26-3-2000 passed by the Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detenu has demanded by way of a representation dated 17-4-2000 to supply the statement of PSI, Shri B.M.Sanghada, but the authority has not supplied the same and, therefore, it is a point which is required to be taken into consideration. Learned APP, S.J.Dave has fairly admitted the same.

4. It has been held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

> "Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

> "It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, though the detenu has requested by way of representation to supply copy of the statement of PSI, Mr.B.M.Sanghada, the same was not supplied. Therefore, the right of the detenu to make an effective representation under Art.22(5) of the Constitution of India has been affected. Therefore, order of detention has been held to be a wrong exercise of power under Sec.9(2) of PASA as per the above reported judgment. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The impugned order of detention dated 26-3-2000 passed against the detenu is hereby quashed and set aside. The detenu-Hasmukhbhai @ Mogli Bhanabhai Rathod is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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